Supreme Court, U.S.
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No. 97-669

In The

Supreme Court of the United States

October Term, 1997

CITY OF BELLEVILLE, ILLINOIS,

Petitioner,

versus

J. DOE and H. DOE, by their parents and next friends, DAVID and MARY DOE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Title VII of the Civil Rights Act of 1964, as amended, protects persons from sexual harassment by members of the same sex.

STATEMENT OF THE CASE

The Does, who are male, were employed at a Belleville-owned cemetery during the summer of 1992. Almost immediately upon commencing their jobs, they were subjected to sexually-charged abuse from fellow male employees, including their supervisor. While the abuse was primarily verbal, in one instance a coworker grabbed J. Doe's genitals while asking whether he was a boy or a girl. The Does complained to a member of Belleville's management (albeit not one who worked at the cemetery). Shortly thereafter, the cemetery supervisor ordered another employee to throw a cherry bomb at the Does. Based on the harassing conduct to which they had been subjected, coupled with the tossing of the cherry bomb, the Does were constructively discharged.

J. and H. Doe, originally by their parents as they were minors at the time, filed suit against Belleville, Illinois under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1983. The Does' Title VII claim was based on gender discrimination and retaliation.

The district court granted summary judgment for Belleville on all of the Does' claims, finding that Title VII did not protect the Does from the conduct alleged in their action. The court of appeals affirmed as to the Does' Title VII retaliation claim, but reversed as to their claims for gender discrimination under Title VII and for a denial of

their right to equal protection under the 14th Amendment and 42 U.S.C. § 1983.[1]

During the time that the Does' appeal was under consideration by the Seventh Circuit, the Supreme Court granted a writ of certiorari in *Oncale v. Sundowner Offshore Services, Inc.*, ___ U.S. ___, 117 S.Ct. 2430, 138 L.Ed.2d 192 (1997). The *Oncale* case has been briefed and argued. The issues before this court in *Oncale* and the matters about which Belleville seeks review are identical. Both cases turn on whether Title VII covers what has come to be known as "same-sex" sexual harassment.

ARGUMENT

Whether Title VII protects victims of same-sex sexual harassment is certainly an issue worth resolving, as this court recognized in granting the writ of certiorari in *Oncale*.[2] Thus, while the Does cannot argue that a grant of a writ of certiorari would be completely unjustified, they do argue that a grant in their case is unnecessary. Because Belleville seeks review of a decision that is precisely what the court is already considering in *Oncale*, there is no need for the court to revisit the issue in this case.

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[1] Belleville's petition covers only the Does' Title VII sex discrimination claim.

[2] Belleville's second listed question presented is simply a challenge to the reasoning behind the Seventh Circuit's holding and does not present a different issue to the court.

CONCLUSION

The Seventh Circuit's decision in this case is in conflict with the Fifth Circuit's decision in *Oncale*. The briefing and argument in *Oncale*, therefore, obviate the need for any further review of this case. Therefore, Belleville's Petition for a Writ of Certiorari should be denied. In the alternative, the Does would request that the court grant Belleville's Petition and, at the appropriate time, summarily remand the case to the Seventh Circuit in light of the decision in *Oncale*.

Respectfully submitted,

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